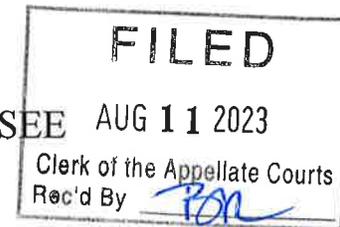


IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT JACKSON  
Assigned on Briefs July 18, 2023



**STATE OF TENNESSEE v. LONELL MONTEZ HARTSHAW**

**Appeal from the Circuit Court for Madison County  
No. 20-703 Donald H. Allen, Judge**

---

**No. W2022-00971-CCA-R3-CD**

---

Lonell Montez Hartshaw, Defendant, appeals the manner of service of his sentences and fines imposed by the trial court after he entered guilty pleas to felony evading arrest, driving under the influence (“DUI”) (second offense), simple possession of a controlled substance, driving on a revoked license (second offense), speeding, violation of the registration law, and violation of the window tint law. Because the trial court did not abuse its discretion, we affirm the judgments of the trial court.

**Tenn. R. App. P. 3 Appeal as of Right; Judgments of the Circuit Court Affirmed**

TIMOTHY L. EASTER, J., delivered the opinion of the court, in which JAMES CURWOOD WITT, JR., and ROBERT H. MONTGOMERY, JR., JJ., joined.

Jessica F. Butler, Assistant District Public Defender – Appellate Division (on appeal), Franklin, Tennessee; Jeremy B. Epperson, Public Defender, and Colin Morris (at trial), Jackson, Tennessee, for the appellant, Lonell Montez Hartshaw.

Jonathan Skrmetti, Attorney General and Reporter; Jonathan H. Wardle, Senior Assistant Attorney General; Jody S. Pickens, District Attorney General; and Eric Wood, Assistant District Attorney General, for the appellee, State of Tennessee.

**OPINION**

A nine-count indictment issued by the Madison County Grand Jury in November 2020 charged Defendant with felony evading arrest in a motor vehicle, DUI per se (second offense), possession of a Schedule I controlled substance (“Ecstasy”), driving on a revoked license (second offense), speeding, violation of the registration law, and violation of the

window tint law. The charges stemmed from the events that took place in Jackson during a traffic stop for a window tint violation.

Defendant entered an open plea, with the trial court to determine his sentence, to the charges as listed in the indictment on the day trial was scheduled to begin. At the plea hearing, counsel for the State told the trial court that had the case gone to trial, the State intended to introduce evidence to show:

On or about September 11, 2020[,] at around 3:30 a.m., Officer [Zachary] Brown with the Jackson Police Department did attempt to initiate a traffic stop on [Defendant] for a window tint violation.

Once the traffic stop was initiated, the vehicle [Defendant] was driving did fail to stop. It turned down multiple different streets. During this time it reached speeds of 46 miles per hour in a 30[-]mile[-]per[-]hour zone.

The car continued on to Washington Douglas Circle where the car stopped and [Defendant] exited the vehicle and began running on foot.

Officer Brown pursued him on foot. He chased him and threatened to tas [sic] him if he didn't stop. [Defendant] stopped at that time and responded without question. "I'm sorry. I had been drinking and that's why I ran." [Defendant] stated multiple times he had been drinking. He had a strong odor of alcohol coming from his person. He had slurred speech and had trouble walking.

Counsel for the State explained that the entire episode was captured on both dash and body cameras. Counsel for the State clarified that Defendant drove "down a few different streets" when the officer attempted the traffic stop and that the entire pursuit lasted about three or four minutes. It was not a high-speed chase. Counsel for the State also explained that when Defendant stopped his car and exited the vehicle, the video shows the officer "chasing right after him" for about 30 to 45 seconds before Defendant was apprehended.

Defendant agreed that the State's recitation of the facts leading up to the indictment was "absolutely correct" and that he committed the offenses that were described. Defendant confirmed that he understood he was under oath and that he was not under the influence of any drugs or medication at the time of the plea hearing. Defendant stated that he reviewed the guilty plea forms with his attorney and that he understood the plea petition. Defendant agreed that he was satisfied with counsel. Defendant indicated his understanding that he was giving up his right

to trial and certain appellate rights except the right to appeal his sentence. Defendant acknowledged that his sentence would be determined at a sentencing hearing, but the trial court reviewed the possible sentences and fines with Defendant, and Defendant indicated his understanding of the same. Defendant stated that he was guilty of each offense and that he was entering his plea freely and voluntarily. The trial court accepted Defendant's guilty pleas to the charges as listed in the indictment.

The trial court admonished Defendant not to "get in to anymore trouble you are out on bond." Defendant responded "you ain't got to worry about it."

At the sentencing hearing, Defendant testified that this was not the first time he had pled guilty to criminal offenses. Defendant stated that he pled in 2012 to "possession of Schedule II narcotics with intent to resell and/or deliver" and received a nine-year sentence. Defendant acknowledged that he served that sentence. Defendant claimed that he had not otherwise been in trouble. He added that he lived in Murfreesboro with his mother, son, and "baby sister," and had been there since his release from prison on the drug charge. Defendant was employed at "Love's Hardee's" truck stop. At the time of the hearing, he had been working at this job for about five months. He worked at least 40 hours a week at \$15 an hour and was offered a position in the management program. Prior to the job at Hardee's, Defendant worked at "Lurical Medical or Medical Lurical" for a few months. Defendant had also worked as a shift leader at Domino's Pizza.

Defendant stated that he was a "changed person" after both of his brothers were killed and he found out his mother was diagnosed with Stage 4 lung cancer. He told the court that he "made a mistake" but that he had his "life together now" and prayed for the court to "take that into consideration." Defendant told the court he was in Jackson that night because he "almost went back to [his] old ways." However, Defendant regretted his decisions. Defendant stated that he was sober at the time of the hearing.

Despite his insistence that he was on an "upward" trend in his life, Defendant admitted that five days after his guilty plea he was arrested for "an additional DUI in Rutherford County" and possession of marijuana. Defendant stated that it was "dismissed" but acknowledged that it was on his driving history. In rebuttal, the State introduced proof from Latosha Bradford of the Tennessee Department of Correction Probation and Parole that Defendant had in fact pled guilty in the Rutherford County case.

Defendant's mother, Angela Murphy, also testified. She acknowledged that she paid Defendant's bond but that it was difficult. She explained that her two other sons were killed. After their deaths, she moved to Murfreesboro. She was diagnosed with lung cancer in May 2019.

Ms. Murphy insisted that Defendant did not have marijuana when he was arrested in Rutherford County and that the marijuana belonged to Defendant's sister, but Defendant took responsibility for the drugs. Ms. Murphy also acknowledged that Defendant was arrested in Kentucky for driving on a revoked license one week after he made bond in Madison County and that there was a warrant issued in Kentucky for Defendant's failure to appear.

At the conclusion of the sentencing hearing, the trial court informed Defendant that it considered the evidence at the guilty plea hearing, the presentence report, the proof at the sentencing hearing, the exhibits, the principles of sentencing, the arguments of counsel, as well as the nature and characteristics of the criminal conduct involved, evidence as to mitigating and enhancement factors, and Defendant's statements. The trial court noted that Defendant's statements "contradicted" the proof offered at the hearing concerning his criminal history. The trial court found Defendant "basically lied under oath when he sa[id] that he hasn't had any trouble since he got released from prison." The trial court expressed frustration that Defendant claimed the Rutherford County charges were dismissed. The trial court stated that it did not "believe that testimony for one second," instead accrediting the testimony of Ms. Bradford. The trial court specifically found Defendant "has not been truthful with the Court today by any stretch of the imagination."

The trial court considered Defendant's prior criminal offenses, noting that he was classified as a Range III, persistent offender with at least six prior felonies and 17 prior misdemeanors. The trial court enhanced Defendant's sentence based on his prior criminal history and his failure to comply with the conditions of a sentence involving release into the community because of at least "four different occasions" where Defendant committed a new offense while under release status. The trial court characterized Defendant's prior criminal history as "extensive" with multiple convictions for aggravated burglary and theft of property as well as a conviction for possession of drugs and various misdemeanors.

The trial court commented, "[Y]ou would think somebody who had been to prison three separate times before and had multiple opportunities for rehabilitation, you would think the first thing they would do once they got out of prison is want to follow the law and obey the law," but "the first thing [Defendant did was go] out and violate[] the law." The trial court acknowledged Defendant's work history but did not find any mitigating factors.

The trial court sentenced Defendant to six years as a Range III offender for the conviction for felony evading arrest in a motor vehicle, revoked Defendant's driving privileges for two years, and ordered Defendant to pay a \$1000 fine. For the DUI, second offense, conviction, the trial court sentenced Defendant to 11 months, 29 days at 75% in the local jail with a \$2000 fine and revocation of driving privileges for two years. For the simple possession conviction, Defendant was sentenced to 11 months, 29 days at 75% with a \$2000 fine. For the driving on a revoked license, second offense, conviction, the trial court sentenced Defendant to 11 months, 29 days at 75% with a \$1000 fine and revocation of driving privileges for one year. The trial court imposed a \$50 fine for each of the following three convictions: speeding, violation of the registration law, and violation of the window tint law.

As to consecutive sentencing, the trial court ordered the six-year sentence for felony evading arrest to be served consecutively to the other sentences, for a total effective sentence of 6 years, 11 months and 29 days. The trial court ordered consecutive sentencing based on Defendant's extensive criminal history and the fact that he committed new offenses while out on bond.

The trial court denied any form of alternative sentence because Defendant was "not credible" and willing to "lie under oath." The trial court set payments on the total of \$6150 fines at \$250 a month. The judgment forms reflect that the trial court merged DUI, first offense in Count 2 with DUI, second offense in Count 3 as well as driving revoked, first offense in Count 5 with driving revoked, second offense in Count 6.

Defendant appealed, apparently first filing a petition for post-conviction relief, though this petition does not appear in the record. Upon agreement of the parties, the post-conviction court entered an order granting this delayed appeal.

#### *Analysis*

Defendant argues on appeal that the trial court abused its discretion in ordering him to serve his sentence in incarceration and pay a \$6150 fine. Specifically, Defendant complains that the trial court failed to consider an alternative sentence and should have "ordered him to participate in a drug and alcohol treatment program." Defendant claims the trial court's "myopic focus on [Defendant's] capacity for truthfulness resulted in a failure to consider each of the sentencing considerations" in Tennessee Code Annotated section 40-35-210(b). With regard to fines, Defendant argues that the trial court failed to place any findings on the record as to why the total amount was appropriate and failed to consider his ability to pay. Because of these deficiencies, Defendant claims the trial court's

decision loses the presumption of reasonableness and urges this Court to remand the matter to the trial court for a “fact-intensive hearing” on fines. The State, on the other hand, argues that the trial court properly imposed a sentence of confinement after “appropriate considerations” and properly imposed fines for Defendant’s convictions.

### *Sentence*

Defendant insists that he should have received an alternative sentence and should have been placed in a drug and alcohol treatment program. He does not challenge the length of his sentences. When a defendant challenges the length or manner of service of a within-range sentence, this Court reviews the trial court’s sentencing decision under an abuse of discretion standard with a presumption of reasonableness. *State v. Caudle*, 388 S.W.3d 273, 278-79 (Tenn. 2012); *State v. Bise*, 380 S.W.3d 682, 708 (Tenn. 2012). This presumption applies to “within-range sentencing decisions that reflect a proper application of the purposes and principles of the Sentencing Act.” *Bise*, 380 S.W.3d at 707. A trial court abuses its discretion in sentencing when it “applie[s] an incorrect legal standard, or reache[s] a decision which is against logic or reasoning that cause[s] an injustice to the party complaining.” *State v. Shuck*, 953 S.W.2d 662, 669 (Tenn. 1997) (citing *Ballard v. Herzke*, 924 S.W.2d 652, 661 (Tenn. 1996)). This deferential standard does not permit an appellate court to substitute its judgment for that of the trial court. *Myint v. Allstate Ins. Co.*, 970 S.W.2d 920, 927 (Tenn. 1998). The defendant bears the burden of proving that the sentence is improper. T.C.A. § 40-35-101, Sentencing Comm’n Cmts.

A defendant is eligible for alternative sentencing if the sentence actually imposed is ten years or less. *See* T.C.A. § 40-35-303(a). Moreover, a defendant who is an especially mitigated or standard offender convicted of a Class C, D, or E felony should be considered a favorable candidate for alternative sentencing absent evidence to the contrary. *See* T.C.A. § 40-35-102(6).

In this case, Defendant was eligible for alternative sentencing because he was sentenced to ten years or less, but not considered a favorable candidate because he was not an especially mitigated or standard offender. Both parties acknowledged that Defendant was a Range III, persistent offender.

Although the trial court is required to automatically consider probation as a sentencing option, *see* Tennessee Code Annotated section 40-35-303(b), no criminal defendant is automatically entitled to probation as a matter of law, *see State v. Davis*, 940 S.W.2d 558, 559 (Tenn. 1997). It is the defendant’s burden to establish his or her suitability for full probation. *State v. Carter*, 254 S.W.3d 334, 347 (Tenn. 2008) (citing T.C.A. § 40-35-303(b)). The defendant must demonstrate that probation will “subserve the ends of

justice and the best interests of both the public and the defendant.” *State v. Sihapanya*, 516 S.W.3d473,474 (2014). Among the factors applicable to probation consideration are the circumstances of the offense; the defendant’s criminal record, social history, and present condition; the deterrent effect upon the defendant; and the best interests of the defendant and the public. *State v. Grear*, 568 S.W.2d 285, 286 (Tenn. 1978). Tennessee Code Annotated section 40-35-103(1) sets forth the following sentencing considerations, which are utilized in determining the appropriateness of alternative sentencing:

(A) Confinement is necessary to protect society by restraining a defendant who has a long history of criminal conduct;

(B) Confinement is necessary to avoid depreciating the seriousness of the offense or confinement is particularly suited to provide an effective deterrence to others likely to commit similar offenses; or

(C) Measures less restrictive than confinement have frequently or recently been applied unsuccessfully to the defendant.

T.C.A. § 40-35-103(1); *see also State v. Zeolia*, 928 S.W.2d 457, 461 (Tenn. Crim. App. 1996). Additionally, “[t]he potential or lack of potential for the rehabilitation or treatment of the defendant should be considered in determining the sentence alternative or length of a term to be imposed.” T.C.A. § 40-35-103(5). A defendant with a long history of criminal conduct and “evincing failure of past efforts at rehabilitation” is presumed unsuitable for alternative sentencing. T.C.A. § 40-35-102(5). Our supreme court has specifically held that the abuse of discretion standard, with a presumption of reasonableness, also applies to a review of a denial of alternative sentencing. *Caudle*, 388 S.W.3d at 278-79.

Here, the trial court explicitly considered “the principles of sentences and the arguments that have been made by counsel as to sentencing alternatives” before finding Defendant had many prior offenses and several violations of probation which led to the trial court’s conclusion that Defendant had a “very extensive history of failing to comply with the conditions of a sentence involving release into the community.” The record reflects that the trial court properly engaged in a careful and detailed consideration of the facts and the law and concluded Defendant “would not abide by any terms of probation” in part because of his “behavior since his arrest.” Defendant complains that the trial court did not consider his struggle with substance abuse, instead relying only on his lack of candor and past failures at probation. We disagree. The trial court noted Defendant’s extensive criminal history, including multiple drug and alcohol convictions, as well as his past failed attempts at probation. The trial court did not abuse its discretion in denying an alternative sentence. Defendant is not entitled to relief on this issue.

## *Fines*

Next, Defendant takes issue with the fines imposed by the trial court. Specifically, he insists that the trial court failed to consider his ability to pay and did not specify a reason for the specific amounts imposed. The State disagrees.

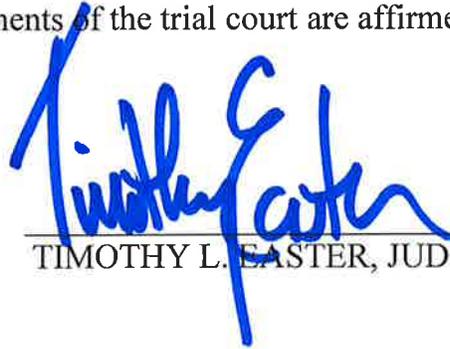
“[F]ines [are reviewed by this Court] as a part of the sentence, and our standard of review is abuse of discretion[.]” *State v. Graham*, No. M2012-00674-CCA-R3-CD, 2013 WL 2311049, at \*5 (Tenn. Crim. App. May 28, 2013) (internal citations omitted), *no perm. app. filed*; *see also State v. Bryant*, 805 S.W.2d 762, 767 (Tenn. 1991). “A trial court abuses its discretion when it applies incorrect legal standards, reaches an illogical conclusion, bases its ruling on a clearly erroneous assessment of the proof, or applies reasoning that causes an injustice to the complaining party.” *State v. Phelps*, 329 S.W.3d 436, 443 (Tenn. 2010). In a case where the range of punishment includes a fine in excess of fifty dollars (\$50.00), the jury finding the defendant guilty shall also fix the fine, if any, in excess of fifty dollars (\$50.00). T.C.A. § 40-35-301. The defendant, however, “may waive the right to have a jury fix the fine and agree that the court fix it, in which case the court may lawfully fix the fine at any amount that the jury could have.” *Id.*; *see State v. Sanders*, 735 S.W.2d 856, 858 (Tenn. Crim. App. 1987). A defendant’s ability to pay is a factor in the establishment of fines but is not a controlling factor. T.C.A. § 40-35-207(a)(7); *State v. Butler*, 108 S.W.3d 845, 854 (Tenn. 2003). A defendant bears the burden to establish why the imposed fine is excessive. *State v. Alvarado*, 961 S.W.2d 136, 153 (Tenn. Crim. App. 1996).

Initially, we note that because Defendant pled guilty, the trial court rather than a jury, fixed the fines. According to the technical record, Defendant qualified as indigent. “A declaration of indigency, standing alone, does not, however, immunize [D]efendant from fines.” *Alvarado*, 961 S.W.2d at 153. “It is merely one factor which may be taken into account.” *Id.*

Defendant testified at the sentencing hearing that he had been working at Hardee’s located within a Love’s truck stop for about five months. He stated he was making \$15.30 an hour and was working at least 40 hours per week. Defendant also testified at the plea hearing that he could enter into a payment plan to pay down prior court costs at an amount of “like \$300 a month.” Defendant presented no evidence of his inability to pay the fines imposed by the trial court and did not object to the imposition of the fines. Moreover, Defendant does not argue that any of the fines imposed by the trial court exceeded the statutory limits. We cannot conclude that the trial court abused its discretion. Defendant is not entitled to relief.

*Conclusion*

For the foregoing reasons, the judgments of the trial court are affirmed.

A handwritten signature in blue ink, appearing to read "Timothy L. Easter", is written over a horizontal line. The signature is stylized and cursive.

TIMOTHY L. EASTER, JUDGE